



EUROPEAN COMMISSION

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Madrid

DECISION OF THE SECRETARY GENERAL ON BEHALF OF THE COMMISSION PURSUANT TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001¹

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2016/5992**

Dear Mr Escudero,

I refer to your e-mail of 22 December 2016, registered on the following day, in which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² ('Regulation 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial application of 25 October 2016, you requested access to *all correspondence (including letters, emails, phonelogs, minutes of meetings...) between the President of the European Commission Jean-Claude Juncker or his Cabinet since November 1st 2014 with:*

- *Spanish Prime Minister Mariano Rajoy or his Cabinet.*
- *Spanish Deputy Prime Minister Soraya Sáenz de Santamaría or her Cabinet.*

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

- *Spanish Minister of Economy Luis de Guindos or his Cabinet.*

At initial level, Directorate D Policy Coordination I informed you that it had identified 15 documents falling within the scope of your request. It:

- granted full access to one document and wide partial access to documents 1 to 6, 8 to 10 and 12 to 15, subject to redaction of personal data only, in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation 1049/2001;
- refused access to documents 7 and 11 on the basis of Article 4(1)(a), fourth indent (protection of the financial, monetary or economic policy of the Union or a Member State) of Regulation 1049/2001.

By your confirmatory application you contest the initial decision of 19 December 2016 not to grant access to documents 7 and 11. These documents are the following:

- Letter of 26 February 2016 addressed by Mr Rajoy Brey to Mr Juncker and one annex Ares(2016)1007386 (Document 7);
- Letter of 5 May 2016 addressed by Mr Rajoy Brey to Mr Juncker Ares(2016)2163483 (Document 11).

You further indicate that you request access not only to the correspondence of the above-mentioned persons but also to the correspondence of their Cabinets. You emphasise that you request *all correspondence between the President of the European Commission Jean Claude Juncker or his Cabinet with Spanish Prier Minister Mariano Rajoy or his Cabinet, Spanish Deputy Prime Minister Soraya Sáez de Santamaría or her Cabinet and Spanish Minister of Economy Luis de Guindos or his Cabinet.* You request explanations why such correspondence has not been identified.

Finally, you indicate that document 14³ mentions two enclosures, namely *a leaflet with an overview of the progress made by the EFSI so far and a summary of the EFSI investments in Spain.* You contest that these enclosures were not transmitted to you.

You underpin your confirmatory application with several arguments which I will address in detail below.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts a fresh review of the reply provided by the relevant service at the initial stage.

³ Letter of 27 September 2016 addressed by Mr Juncker to Mr Rajoy Ares(2016)5585462.

As part of its review and following the clarification, in your confirmatory application, of the scope of your request, the Secretariat-General conducted a new search for additional documents which could fall within that scope.

I am pleased to inform you that full access is granted to the following two enclosures to document 14 which were omitted in the initial decision due to a clerical error:

- A leaflet with an overview of the progress made by the EFSI (*Plan de inversiones para Europa*), Ares(2016)5585462 (Enclosure 1);
- A summary of the EFSI investments in Spain, Ares(2016)5585462 (Enclosure 2).

As regards the identification of documents, I confirm that the Commission does not hold any additional document, other than the documents already identified at initial stage, as falling within the scope of your request.

2.1. Consultation of the Spanish authorities

Documents 7 and 11 originate from the Spanish authorities. According to Article 4(4) of Regulation 1049/2001, *as regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed*. According to Article 4(5) of Regulation 1049/2001, *a Member State may request the institution not to disclose a document originating from that Member State without its prior agreement*.

Under the provisions of Article 4(4) and (5) of Regulation 1049/2001 and with a view to taking into account the arguments put forward in your confirmatory application, a renewed third-party consultation of the Spanish authorities was initiated by the Secretariat-General at confirmatory stage. The Spanish authorities opposed themselves to the release of the documents with reference to the exceptions of Article 4(1)(a), third and fourth indents (protection of the public interest as regards respectively international relations and the financial, monetary or economic policy of the Union or a Member State), as well as Article 4(2), third indent (protection of the purpose of inspections, investigations and audits) and Article 4(3), first subparagraph (protection of the decision-making process) of Regulation 1049/2001.

The Spanish authorities indicated that disclosure of the requested documents would undermine the public interest as regards the position of Spain in its international relations and the economic policy of Spain as member of the European Union and in the context of the Economic and Monetary Union.

In particular, the Spanish authorities stated that the requested documents were sent by the Spanish Prime Minister to the President of the European Commission in the context of the excessive deficit procedure which is still ongoing.

They explained further that, as provided for by Council Regulation 1467/97⁴ on speeding up and clarifying the implementation of the excessive deficit procedure, the latter procedure can lead to the acknowledgement of non-compliance of the obligation to correct excessive deficits and the imposition on the Kingdom of Spain of a financial sanction. It is therefore a particularly serious procedure for any Member State and, consequently, any bilateral correspondence which forms part of such a procedure must be kept in the narrow field of the institutions which are responsible for applying this procedure.

Furthermore, this procedure, which is similar to an infringement procedure, must also be protected while it is still ongoing, in accordance with Article 4(2), third indent (protection of the purpose of inspections, investigations and audits) of Regulation 1049/2001.

The Spanish authorities also pointed out that, in any case, Article 4(3), first subparagraph of Regulation 1049/2001 would allow the institution to withhold documents whose disclosure would seriously undermine the institution's decision-making process. In this case, public disclosure of the correspondence between the Commission and the Kingdom of Spain may negatively affect future decision-making, which can be particularly serious for Spain in the ongoing proceedings of Regulation 1467/97. This bilateral correspondence has taken place under the principle of sincere cooperation between Member States and institutions, was prepared for consideration in the procedure provided for in Regulation 1467/97 and was intended for internal use only.

This procedure concerns in a very direct manner the economic policy of the Kingdom of Spain, as corrective measures are also decided during this procedure. The protection of Spain's economic and financial policy should be seen as an overriding interest for these purposes. Therefore, Article 4(1)(a), fourth indent (protection of the financial, monetary or economic policy of the Union or a Member State) shall apply.

2.2. Commission's assessment

I have carried out a *prima facie* assessment of the reply provided by the Spanish authorities and came to the conclusion that the arguments of the Spanish authorities *prima facie* justify the non-disclosure of parts of the documents covered by the exceptions of Article 4(1)(a), third and fourth indents (protection of the public interest as regards respectively the financial, monetary or economic policy of the Union or a Member State, and international relations), Article 4(2), third indent (protection of the purpose of inspections, investigations and audits) and Article 4(3), first subparagraph (protection of the decision-making process) of Regulation 1049/2001. Furthermore, personal data appearing in the documents have been redacted in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation 1049/2001.

⁴ Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure, Official Journal L 209, 2.8.1997, p. 6–11.

The detailed reasons are set out below.

Please note that some parts of Documents 7 and 11 are not covered by any exception of Regulation 1049/2001. The parts that are not covered by any exception of Regulation 1049/2001 are either declarations of the government which are in the public domain, general information or data related to the past performance of the Spanish economy. The data related to the past performance of the Spanish economy have been rendered public through the Council decisions which addressed the excessive deficit in Spain since 2009⁵, through publication of statistical data on the performance of the Spanish economy, articles in the press⁶, declarations and publications of the Spanish government⁷ and Commission reports and recommendations⁸.

I would like to specify that Document 7 is composed by a letter and an annex. The letter of 26 February 2016 is only a transmission letter and it does not contain information relating to the excessive deficit of Spain. Therefore, it is not covered by any of the invoked exceptions. It is, however, subject to redaction of personal data in accordance with Article 4(1)(b) (protection of privacy and the integrity of the individual).

Access is granted to the transmission letter of 26 February 2016 subject to redaction of personal data only (part of Document 7). As to the annex to this letter (part of Document 7) and the letter of 5 May 2016 (Document 11), access is granted to those parts of the requested documents which are not covered by any exceptions of Regulation 1049/2001.

2.3. Protection of privacy and integrity

Article 4(1)(b) of Regulation 1049/2001 provides that *access to documents is refused where disclosure would undermine the protection of privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.*

In its judgment in the *Bavarian Lager* case⁹, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No. 45/2001¹⁰ (hereinafter the 'Data Protection Regulation') becomes fully applicable. In this judgment the Court stated that Article 4(1)(b) *requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in*

⁵ See for example <http://data.consilium.europa.eu/doc/document/ST-11555-2016-INIT/en/pdf>.

⁶ See for example http://elpais.com/elpais/2017/02/17/media/1487326778_968659.html.

⁷ http://www.mineco.gob.es/stfls/mineco/comun/pdf/160509_np_estabilidad.pdf.

⁸ For example, https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/stability-and-growth-pact/corrective-arm-excessive-deficit-procedure/ongoing-excessive-deficit-procedures/spain_en.

⁹ Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd*, Case C-28/08P, EU:C:2010:378, paragraph 59.

¹⁰ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, Official Journal L 8 of 12.1.2001.

*conformity with the legislation of the Union concerning the protection of personal data, and in particular with Regulation No 45/2001*¹¹.

Article 2(a) of the Data Protection Regulation provides that '*personal data*' shall mean any information relating to an identified or identifiable person [...]. As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*)¹², there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life.

The letter of 26 February 2016 (part of Document 7) contains the hand-written signature of Mr Rajoy Brey, which is biometric data to be considered as personal data in the sense of Article 2(a) of Data Protection Regulation 45/2001.

Pursuant to Article 8(b) of Regulation 45/2001, the Commission can only transmit personal data to a recipient subject to Directive 95/46/EC if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced. Those two conditions are cumulative.¹³

Only if both conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 45/2001, can the processing (transfer) of personal data occur.

In the *ClientEarth* case, the Court of Justice ruled that whoever requests such a transfer must first establish that it is necessary. If it is demonstrated to be necessary, it is then for the institution concerned to determine that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject. If there is no such reason, the transfer requested must be made, whereas, if there is such a reason, the institution concerned must weigh the various competing interests in order to decide on the request for access¹⁴.

In your confirmatory application, you do not put forward any arguments to establish the necessity of, nor any interest in access to the personal data contained in Documents 7 (transmission letter) and Document 11.

Furthermore, there are reasons to assume that the legitimate interests of the individual concerned would be prejudiced by disclosure of the personal data included in this document, as there is a real and non-hypothetical risk that such public disclosure would expose it to specific risks, for example forgery of its signature or identity theft.

Consequently, pursuant to Article 4(1)(b) of Regulation 1049/2001, access is refused to the signature of Mr Rajoy Brey included in Documents 7 (transmission letter) and Document 11.

¹¹ Paragraph 59.

¹² Judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between *Rechnungshof* and *Österreichischer Rundfunk*, EU:C:2003:294, paragraph 73.

¹³ Judgment of the Court of Justice of 29 June 2010, *Bavarian Lager*, quoted above, paragraphs 77-78.

¹⁴ Case C-615/13P, Judgment of the Court of Justice 16 July 2015 *ClientEarth v EFSA*, EU:C:2015:489, paragraph 47.

I would also like to point out that Article 4(1)(b) has an absolute character and does not envisage the possibility to demonstrate the existence of an overriding public interest.

2.4. Protection of financial, monetary or economic policy of the Union or a Member State

Article 4(1)(a), fourth indent of Regulation 1049/2001 provides that *[t]he institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards the financial, monetary or economic policy of the Union or a Member State.*

The EU Courts have acknowledged that the institutions enjoy a wide discretion when considering whether access to a document may undermine the public interest¹⁵.

The withheld parts of Documents 7 (annex) and 11 concern detailed considerations of the Spanish Government related to the assessment of its deficit in the context of Regulation 1467/97.

Spain has been subject to an excessive deficit procedure since April 2009, when the Council issued a recommendation calling for its deficit to be corrected by 2012. In December 2009 however, the Council extended the deadline to 2013. In July 2012, the Council extended the deadline for a further year to 2014 on account of renewed adverse economic circumstances. In June 2013, the Council found that Spain fulfilled the conditions for extending the deadline for correcting its deficit by a further two years, setting a new deadline of 2016. On 12 July 2016, the Council decided that Spain had not taken effective action in response to its recommendations on measures to correct its excessive deficit¹⁶.

On 8 August 2016, the Council agreed not to impose a fine to Spain for its failure to take effective action to correct its excessive deficit¹⁷. The Council considered that a credible and sustainable adjustment path requires Spain to achieve general government deficits of 4.6%, 3.1% and 2.2% of GDP in 2016, 2017 and 2018 respectively¹⁸. The new deadlines set by the Council are based on article 126(9) of the TFEU. Spain is now required to correct its deficit by 2018 at the latest.

The withheld parts of Documents 7 (annex) and 11 concern detailed considerations of the Spanish Government related to the assessment of its deficit in the context of Regulation 1467/97. These documents were not intended for public disclosure. They contain considerations, views, analyses, calculations and conclusions of the Spanish Government related to the deficit in Spain provided to the President of the Commission. As explained above, the deadlines set by the Council to Spain to correct its deficit are prolonged by 2018. Therefore, they remain still relevant for the ongoing efforts of Spain to correct its

¹⁵ Judgment of the Court of First Instance of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, EU:T:2007:114, paragraph 40.

¹⁶ <http://data.consilium.europa.eu/doc/document/ST-10793-2016-INIT/en/pdf>.

¹⁷ <http://data.consilium.europa.eu/doc/document/ST-11555-2016-INIT/en/pdf>.

¹⁸ <http://www.consilium.europa.eu/en/press/press-releases/2016/08/08-excessive-deficit-portugal-spain/>.

excessive deficit effectively, as they reflect possible options and strategies considered by the Spanish Government. Tackling an excessive deficit promptly and effectively is not only an essential element of Spain's economic policy, but also an essential element of the Union's economic policy.

These findings are supported by the detailed explanations provided by the Spanish authorities in the framework of the Commission's consultations cited above.

Therefore, I conclude that the withheld parts of the requested documents are covered by the exception of Article 4(1)(a), fourth indent of Regulation 1049/2001 (protection of financial, monetary or economic policy of the Union or a Member State).

Please note that the exception of Article 4(1)(a), fourth indent of Regulation 1049/2001 has an absolute character and does not envisage the possibility to demonstrate the existence of an overriding public interest.

2.5. Protection of the public interest as regards international relations

Article 4(1)(a), third indent, of Regulation 1049/2001 provides that the *institutions shall refuse access to a document where disclosure would undermine the protection of (...) the public interest as regards international relations*.

The Court of Justice has confirmed that *it is clear from the wording of Article 4(1)(a) of Regulation No 1049/2001 that, as regards the exceptions to the right of access provided for by that provision, refusal of access by the institution is mandatory where disclosure of a document to the public would undermine the interests which that provision protects, without the need, in such a case and in contrast to the provisions, in particular, of Article 4(2), to balance the requirements connected to the protection of those interests against those which stem from other interests*¹⁹.

According to the General Court, *the institutions enjoy a wide discretion when considering whether access to a document may undermine the public interest and, consequently, [...] the Courts review of the legality of the institutions' decisions refusing access to documents on the basis of the mandatory exceptions relating to the public interest must be limited to verifying whether the procedural rules and the duty to state reasons have been complied with, the facts have been accurately stated, and whether there has been a manifest error of assessment of the facts or a misuse of powers*²⁰.

As explained by the Spanish authorities in their detailed reply to the Commission consultation, Documents 7 (annex) and 11 contain information which is not public, the disclosure of which, at this stage, could have a negative impact on the international relations of Spain in areas related to its economic policy and its financing in international markets.

¹⁹ Judgement of the Court of Justice of 1 February 2007 in case C-266/05 P, *Sison v Council*, EU:C:2007:75, paragraph 46.

²⁰ Judgement of the General Court, at the time Court of First Instance, of 25 April 2007 in case T-264/04, *WWF European Policy Programme v Council*, EU:T:2007:114, paragraph 40.

I therefore conclude that non-disclosure, at this stage, of the withheld parts of Documents 7 (annex) and 11 is justified on the basis of Article 4(1)(a), third indent of Regulation 1049/2001. I would also like to point out this exception has an absolute character and does not envisage the possibility to demonstrate the existence of an overriding public interest.

2.6. Protection of the decision-making process

Article 4(3), first subparagraph of Regulation 1049/2001 provides that *[a]ccess to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.*

On 27 April 2009, the Council decided, in accordance with Article 104(6) of the Treaty establishing the European Community (TEC), that an excessive deficit existed in Spain and issued a recommendation to correct the excessive deficit by 2012 at the latest, in accordance with Article 104(7) of that Treaty. Since then, the Council has issued three new recommendations to Spain (on 2 December 2009, 10 July 2012 and 21 June 2013) on the basis of Article 126(7) of the Treaty on the Functioning of the European Union (TFEU), which extended the deadline for correcting the excessive deficit to 2013, 2014 and 2016 respectively. In all three recommendations, the Council considered that Spain had taken effective action, but unexpected adverse economic events with major unfavourable consequences for government finances had occurred²¹.

Although the Council agreed on 8 August 2016 not to impose a fine on Spain for its failure to take effective action to correct its excessive deficit, it set a new correction deadline by 2018 and gave notice of measures to be taken²².

It is clear from the above that the final decision relating to the correction of the Spanish deficit is still pending until 2018. The withheld parts of Documents 7 (annex) and 11 remain highly relevant for the ongoing decision-making process relating to the excessive Spanish deficit. The importance of tackling excessive deficits effectively and promptly makes it essential to maintain high level of trust among the Commission and Spain all along the ongoing decision-making process.

Therefore, if the withheld parts of Documents 7 (annex) and 11 would become public at this stage, there is a realistic and non-hypothetical, serious risk that the ongoing decision-making process would be undermined. Public disclosure, at this stage, against the expressed and repeated opposition of Spain, would make known the strategy and considerations of the Spanish government related to the extensive deficit in Spain, thereby restricting the margin of manoeuvre of the Spanish government for the correction of the excessive deficit. This would seriously jeopardise the atmosphere of good inter-institutional collaboration, put under strain the relations of Spain with the European

²¹ All documents related to the excessive deficit procedure of Spain can be found at: http://ec.europa.eu/economy_finance/economic_governance/sgp/deficit/countries/spain_en.htm.

²² <http://data.consilium.europa.eu/doc/document/ST-11552-2016-INIT/en/pdf>.

institutions and reduce the Commission's leverage in the ongoing procedure, thus jeopardising the success of the ongoing decision-making process.

Against this background, I consider that the disclosure of the withheld parts of Documents 7 (annex) and 11 would seriously undermine the ongoing decision-making process in the meaning of Article 4(3), first subparagraph of Regulation 1049/2001.

2.7. Protection of the purpose of inspections, investigations and audits

Article 4(2), third indent of Regulation 1049/2001 stipulates that:

The institutions shall refuse access to a document where disclosure would undermine the protection of (...) the purpose of inspections, investigations and audits (...) unless there is an overriding public interest in disclosure.

Article 2(2) of Regulation 1467/97 refers to the role of the Commission and the Council, when assessing and deciding upon the existence of an excessive deficit in accordance with Article 126(3) to (6) TFEU. Article 2(3) of Regulation 1467/97 stipulates that the Commission, when preparing a report under Article 126(3) TFEU, shall take into account all relevant factors as indicated in that Article, in so far as they significantly affect the assessment of compliance with the deficit and debt criteria by the Member State concerned. The activity of the Commission in this field requires the collection of several data, and an assessment based on a multitude of factors stipulated in Regulation 1467/97.

The aim of the exception of Article 4(2), third indent of Regulation 1049/2001 is not to protect the investigations as such, but rather their purpose which, in the present case, is to induce the Spanish authorities to comply with European law. According to settled case-law, various acts of investigation remain covered by the exception as long as that goal has not been attained.

In its *LPN* judgment the Court of Justice ruled that a general presumption for the protection to ongoing infringement proceedings is deemed to exist: *[i]t can be presumed that the disclosure of the documents concerning an infringement procedure during its pre-litigation stage risks altering the nature of that procedure and changing the way it proceeds and, accordingly, that disclosure would in principle undermine the protection of the purpose of investigations, within the meaning of the third indent of Article 4(2) of Regulation No 1049/2001*²³.

This reasoning was confirmed by the Court of Justice in the appeal to *Client Earth* judgment²⁴.

In the light of the above, I consider that public access to the withheld parts of Documents 7 (annex) and 11 has to be refused, as its disclosure would undermine the purpose of the

²³ Judgment of the Court in joined cases C-514/11 P and C-605/11 P, *Liga para a Protecção da Natureza (LPN) and Republic of Finland v European Commission*, EU:C:2013:738, paragraph 65.

²⁴ Judgment of the Court of 16 July 2015 in Case C-612/13P, *ClientEarth v European Commission*, EU:C:2015:486, paragraph 72.

investigations mentioned above, protected by Article 4(2), third indent of Regulation 1049/2001.

3. NO OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in Articles 4(2) and 4(3) of Regulation 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, first, be public and, second, outweigh the harm caused by disclosure.

You have not substantiated, in your confirmatory application, the existence of any public interest that would override the protection of purpose of the investigations and the decision-making process protected respectively by Article 4(2), third indent and 4(3), first subparagraph of Regulation 1049/2001. Nor have I been able, based on the elements at my disposal, to identify such an interest.

Consequently, I consider that, in the present case, the prevailing interest lies in protecting the purpose of the investigations and the decision-making process as protected by the exceptions in Article 4(2), third indent and Article 4(3), first subparagraph of Regulation 1049/2001.

Please note that the requested documents are also covered by the exceptions of Articles 4(1)(a), third and fourth indents and 4(1)(b) of Regulation 1049/2001. These exceptions have an absolute character and do not envisage the possibility to demonstrate the existence of an overriding public interest.

4. DISCLOSURE AGAINST THE EXPLICIT OPINION OF THE AUTHOR

According to Article 5(5) and (6) of Commission Decision of 5 December 2001 amending its rules of procedure²⁵, *[t]he third-party author consulted shall have a deadline for reply which shall be no shorter than five working days but must enable the Commission to abide by its own deadlines for reply. In the absence of an answer within the prescribed period, or if the third party is untraceable or not identifiable, the Commission shall decide in accordance with the rules on exceptions in Article 4 of Regulation (EC) No 1049/2001, taking into account the legitimate interests of the third party on the basis of the information at its disposal. If the Commission intends to give access to a document against the explicit opinion of the author, it shall inform the author of its intention to disclose the document after a ten-working day period and shall draw his attention to the remedies available to him to oppose disclosure.*

Since the decision to grant partial access to Documents 7 and 11 is taken against the objection of the Spanish authorities, the Commission will inform the Spanish authorities of its decision to give partial access to the documents requested. The Commission will not grant such partial disclosure until a period of **ten working days** has elapsed from the

²⁵ Commission Decision of 5 December 2001 amending its rules of procedure (notified under document number C(2001) 3714), O.J. of 29.12.2001, L 345, p. 94.

formal notification of its intention to disclose the documents to the Spanish authorities, in accordance with the provisions mentioned above.

This time-period will allow the Spanish authorities to inform the Commission whether it will object to the disclosure using the remedies available to it, i.e. an application for annulment and an application for interim measures before the General Court. Once this period has elapsed, and if the Spanish authorities have not signalled their intention to avail themselves of the remedies at their disposal, the Commission will forward the documents to you.

5. MEANS OF REDRESS

I would like to draw your attention to the means of redress that are available against this decision, that is, judicial proceedings and complaints to the Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

*For the Commission
Alexander ITALIANER
Secretary-General*



Enclosures (2)